

Appl. No. 10/811,695
Docket No. 9595
Response dated October 2, 2006
Reply to Office Action mailed on June 30, 2006
Customer No. 27752

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REMARKS

Claim Status

Claims 1-20 are pending. Claims 1-20 stand provisionally rejected under a double-patenting rejection. Claims 1-11, 14, and 19-20 stand rejected under 35 USC § 102(b). Claims 12, 13, and 15 stand rejected under 35 USC § 103(a). Claim 1 is currently amended. No claims are canceled or added with this Response.

Double-Patenting Provisional Rejection Over Copending Application No. 10/811,696

Claims 1-20 stand provisionally rejected under a double-patenting rejection over claims 1-21 of copending application number 10/811,696. The Applicant points out that the cited application, number 10/811,696, was filed on March 29, 2004, which is the same date on which the present Application was filed. As a result, the Applicant submits that the the cited application, number 10/811,696, cannot be considered prior art against the present Application. As a result, the Applicant respectfully requests reconsideration and withdrawal of the provisional double-patenting rejection of claims 1-20.

Rejections Under 35 USC § 102(b) Over Dobrin

Claims 1-4, 7-9, 11, 19, and 20 stand rejected under 35 USC § 102(b) as being unpatentable over Dobrin, et al. (US 5,571,096 A). The Applicant does not admit that any characterization by the Office Action regarding these rejections is correct, but discusses such characterizations herein for the sake of argument. The Applicant traverses the rejections under 35 USC § 102 over the Dobrin reference for the reasons discussed below.

Independent claim 1, as currently amended, recites in part a "backsheet having a physical variation" wherein "said physical variation is measured by a physical property selected from the group consisting of basis weight, thickness, density and tensile modulus." The Office Action cited a backsheet 26 from the Dobrin reference against the above-cited portion of claim 1. (Office Action, page 4, paragraph 1.) The Office Action stated that the "unperforated portion (74) of the backsheet (26) has a greater basis weight and density than the perforated portions (76)." (Office Action, page 4, paragraph 4.)

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From the Applicant's review of the Dobrin reference, the unperforated portion 70 appears to correspond with "apertured zone 80" and the perforated portions 76 appear to correspond with "non-apertured zone 82." (Dobrin, column 7, lines 35-45 and Figure 2.)

From the Applicant's review, the Dobrin reference does not appear to disclose that the non-apertured zone 80 physically varies in basis weight or density when compared with the apertured zone 82. Instead, the non-apertured zone 80 appears to physically vary in vapor and/or liquid permeability when compared with the apertured zone 82. (Dobrin, column 7, lines 47-48 and 65-67.) As a result, the Dobrin reference does not appear to disclose a "backsheet having a physical variation" wherein "said physical variation is measured by a physical property selected from the group consisting of basis weight, thickness, density and tensile modulus" as recited in part in the Applicant's claim 1. For this reason, the Applicant asserts that the Dobrin reference does not disclose each and every element of the Applicant's independent claim 1. As a result, the Applicant respectfully requests reconsideration and withdrawal of the 102(b) rejection over the Dobrin reference for independent claim 1 and for the claims which depend therefrom.

Independent claim 1 originally recited in part that "said first stretch region co-elongates with said second stretch region." The Office Action stated that the "limitation concerning the co-stretchability of the elastic elements is functional" and that an "apparatus claim must be structurally distinguishable over the prior art." (Office Action, page 4, paragraph 3.) The Applicant notes that independent claim 1, as currently amended, recites in part that "said first stretch region is configured to co-elongate with said second stretch region." The Applicant respectfully submits that the above-cited configuration in claim 1, as currently amended, is a structural limitation.

Rejections Under 35 USC § 102(b) Over Roe

Claims 1, 5, 6, 10, and 14 stand rejected under 35 USC § 102(b) as being unpatentable over Roe, et al. (US 2002/0128617 A1). The Applicant does not admit that any characterization by the Office Action regarding these rejections is correct, but discusses such characterizations herein for the sake of argument. The Applicant traverses

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the rejections under 35 USC § 102 over the Roe reference for the reasons discussed below.

Independent claim 1, as currently amended, recites in part a “backsheet having a physical variation” wherein “said physical variation is measured by a physical property selected from the group consisting of basis weight, thickness, density and tensile modulus.” The Office Action cited a backsheet 26 from the Roe reference against the above-cited portion of claim 1. (Office Action, page 6, paragraph 8.) The Office Action stated that “Zones (32) and the backsheet at the central crotch region differ in their tensile modulus.” (Office Action, page 8, paragraph 1.) From the Applicant’s review of the Roe reference, the zones 32 appear to be a “back waist feature 32.” (Roe, column 6, paragraph 62.)

From the Applicant’s review, the Roe reference does not appear to disclose that the back waist feature 32 physically varies in tensile modulus when compared with the backsheet at the crotch region. From the Applicant’s review, the Roe reference does not appear to describe any particular tensile modulus for the crotch region. As a result, the Roe reference does not appear to disclose a “backsheet having a physical variation” wherein “said physical variation is measured by a physical property selected from the group consisting of basis weight, thickness, density and tensile modulus” as recited in part in the Applicant’s claim 1. For this reason, the Applicant asserts that the Roe reference does not disclose each and every element of the Applicant’s independent claim 1. As a result, the Applicant respectfully requests reconsideration and withdrawal of the 102(b) rejection over the Roe reference for independent claim 1 and for the claims which depend therefrom.

Rejections Under 35 USC § 103(a) Over Roe

Claims 12, 13, and 15 stand rejected under 35 USC § 103(a) as being unpatentable over Roe, et al. (US 2002/0128617 A1). The Applicant does not admit that any characterization by the Office Action regarding these rejections is correct, but discusses such characterizations herein for the sake of argument. The Applicant traverses the rejections under 35 USC § 103 over the Roe reference for the reasons discussed below.

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As discussed above, from the Applicant's review, the Roe reference does not appear to describe any particular tensile modulus for the crotch region. Thus, the Roe reference does not appear to describe, teach, or suggest that the back waist feature 32 physically varies in tensile modulus when compared with the backsheet at the crotch region. As a result, the Roe reference does not appear to describe, teach, or suggest a "backsheet having a physical variation" wherein "said physical variation is measured by a physical property selected from the group consisting of basis weight, thickness, density and tensile modulus" as recited in part in the Applicant's claim 1. For this reason, the Applicant asserts that the Roe reference does not describe, teach, or suggest each and every element of the Applicant's independent claim 1. Claims 12, 13, and 15 depend from independent claim 1 and thus incorporate each and every claim limitation of independent claim 1. As a result, the Applicant respectfully requests reconsideration and withdrawal of the 103(a) rejection for claims 12, 13, and 15, which depend from independent claim 1.

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Conclusion

This Response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of claims 1-20 is respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By Charles R. Ware
Signature
Charles R. Ware
Registration No. 54,881
(513) 634-5042

Date: October 2, 2006
Customer No. 27752